

HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

PUGET SOUNDKEEPER ALLIANCE,	)	
	)	No. 2:10-CV-01040-MJP
Plaintiff,	)	
	)	CONSENT DECREE
v.	)	
	)	
ALASKA MARINE LINES, INC.,	)	
	)	
Defendant.	)	
_____	)	

WHEREAS, Plaintiff Puget Soundkeeper Alliance filed a Complaint against Defendant Alaska Marine Lines, Inc. on June 23, 2010, alleging violations of the Clean Water Act, 33 U.S.C. §§ 1251-1387, relating to discharges of stormwater from Defendant's facility located in Seattle, Washington, seeking declaratory and injunctive relief, civil penalties and attorneys fees and costs; and

WHEREAS, Defendant denies Plaintiff's claims and any liability for the alleged violations; and

WHEREAS, counsel and representatives for the parties to this action have engaged in

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SMITH & LOWNEY, P.L.L.C.  
2317 EAST JOHN STREET  
SEATTLE, WASHINGTON 98112  
(206) 860-2883

1 discussions relating to the potential settlement of this litigation, which discussions have included  
2 an assessment of the facts surrounding the alleged violations; and

3 WHEREAS, Defendant has undertaken, and is implementing, measures to further ensure  
4 compliance with the Clean Water Act and to address issues raised in the notice of intent to sue  
5 served by Plaintiff; and  
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7 WHEREAS, Plaintiff and Defendant agree that settlement of these matters is in the best  
8 interest of the parties and the public, and that entry of this Consent Decree without additional  
9 litigation is the most appropriate means of resolving these actions; and  
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11 WHEREAS, Plaintiff and Defendant, by their authorized counsel and without trial or  
12 final adjudication of the issues of fact or law, with respect to Plaintiff's claims or allegations,  
13 consent to the entry of this Consent Decree in order to avoid the risks of litigation and to resolve  
14 the controversy between them.  
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16 NOW THEREFORE, without trial of any issue of fact or law, and without admission by  
17 the Defendant of the facts or violations alleged in the Complaint, and upon consent of the parties,  
18 and upon consideration of the mutual promises herein contained, it is hereby  
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20 ORDERED, ADJUDGED AND DECREED as follows:

21 1. This Court has jurisdiction over the parties and the subject matter of this action;  
22 2. The undersigned representative for each party certifies that he or she is fully  
23 authorized by the party or parties whom he or she represents to enter into the terms and  
24 conditions of this Consent Decree and to legally bind the party or parties and their successors in  
25 interest to it.  
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27 3. This Consent Decree shall apply to, and be binding upon, the parties, and upon  
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1 the successors and assigns of the parties.

2 4. This Consent Decree shall apply to Defendant's operation and/or oversight of its  
3 facility located at or about 5600 W. Marginal Way SW and at the Duwamish Shipyards, Inc.  
4 facility at 5658 W. Marginal Way SW, Seattle, Washington 98106 (referred to collectively as the  
5 “facility”).  
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7 5. This Consent Decree constitutes a full and complete settlement of the claims  
8 alleged in the Complaint and all other claims known and unknown existing as of the date of entry  
9 of this Consent Decree, that could be asserted under the Clean Water Act, 33 U.S.C. §§ 1251-  
10 1387, arising from operations of the facility identified in paragraph 4 of this Consent Decree.  
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12 6. This Consent Decree shall not constitute evidence in any proceeding, an  
13 admission or adjudication with respect to any allegation of the Complaint, any fact or conclusion  
14 of law with respect to any matter alleged in or arising out of the Complaint, or the admission or  
15 evidence of any wrongdoing or misconduct on the part of the Defendant or its successor.  
16

17 7. In full and complete satisfaction of the claims covered by the Complaint and all  
18 other claims covered by this Consent Decree, as described in Paragraph 5, Defendant agrees to  
19 abide by and be subject to the following terms and conditions:  
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21 a. Defendant shall comply fully with all conditions of its National Pollutant  
22 Discharge Elimination System Permit No. WAR-001365 and any successor, modified, or  
23 replacement permit (the “NPDES permit”);  
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25 b. Defendant shall, for a period of three (3) years beginning on the date that  
26 this Consent Decree is entered by the Court, forward copies to Plaintiff of all written or  
27 electronic communications between Defendant and the Washington Department of Ecology  
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1 (“Ecology”) concerning Defendant’s compliance with the NPDES permit and the Clean Water  
2 Act, including but not limited to Discharge Monitoring Reports (“DMRs”), Annual Reports,  
3 adaptive management reports, correspondence, and inspection reports. All copies shall be  
4 forwarded to Plaintiff on a quarterly basis and not later than the forty-fifth (45th) day following  
5 the end of each calendar quarter;  
6

7 c. If any three (3) of the eight (8) quarterly stormwater sampling results  
8 collected after the entry of this Consent Decree by the Court, or if any three (3) quarterly  
9 stormwater sampling results collected in calendar year 2010, from the discharge point labeled  
10 “Outfall 2” on the facility map attached hereto as Attachment A (“DP-2”) exceed the NPDES  
11 permit’s benchmark for total zinc of 117 µg/L, Defendant shall conduct a “Level Three  
12 Corrective Action” for DP-2 as that term is used in the NPDES permit. As part of the Level  
13 Three Corrective Action, Defendant shall retain a licensed professional engineer to revise the  
14 stormwater pollution prevention plan (“SWPPP”) for the facility to include additional best  
15 management practices (“BMPs”) and additional stormwater treatment measures that are, in the  
16 professional judgment of the licensed professional engineer, sufficient to meet the NPDES  
17 permit’s benchmarks at DP-2. These revisions to the SWPPP shall be completed within ninety  
18 (90) days of Defendant’s receipt of the stormwater sampling results triggering the requirements  
19 of this sub-paragraph 7.c, and Defendant shall provide Plaintiff a copy of the revised SWPPP at  
20 that same time. The revisions to the SWPPP shall include an implementation schedule that  
21 requires the additional BMPs and stormwater treatment measures be implemented as soon as  
22 possible, but in no instance later than September 30th of the year after the requirements of this  
23 sub-paragraph 7.c are triggered. Defendant shall fully comply with the implementation schedule  
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1 included in the revised SWPPP, and Defendant shall provide Plaintiff with written notification of  
2 Defendant's complete implementation of the additional BMPs and stormwater treatment  
3 measures described in the revised SWPPP.

4           d.       Upon entry of this Consent Decree, and irrespective of the stormwater  
5 monitoring frequency required under the Defendant's NPDES permit, Defendant shall collect  
6 samples of stormwater from the discharge point labeled "Outfall 1" on the facility map attached  
7 hereto as Attachment A ("DP-1") on a monthly basis and have such monthly samples analyzed  
8 for the pollutant parameters required by the NPDES permit. For the purposes of this sub-  
9 paragraph 7.d, Defendant need not collect stormwater samples in months when precipitation is  
10 insufficient to generate a stormwater discharge from DP-1, when discharges from DP-1 are  
11 inaccessible, or when discharges from DP-1 are outside normal business hours. The results of all  
12 such monitoring shall be reported to Ecology on DMRs in accordance with the NPDES permit.  
13 In accordance with the NPDES permit, Defendant shall report the average of all stormwater  
14 sampling results collected in a calendar quarter for each parameter on the DMRs it submits to  
15 Ecology. Defendant shall provide Plaintiff with the lab reports for the analysis of the eight (8)  
16 stormwater samples collected at DP-1 after the entry of this Consent Decree; these lab reports  
17 shall be provided on a quarterly basis and not later than the forty-fifth (45th) day following the  
18 end of each calendar. The stormwater monitoring frequency requirements of this sub-paragraph  
19 shall terminate eighteen months from entry of this Consent Decree by the Court, however,  
20 Defendant shall continue stormwater sampling and reporting of DP-1 under the terms of the  
21 NPDES Permit unless and until it achieves "consistent attainment" as that term is defined by the  
22 NPDES permit.  
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1 e. If any three (3) of the eight (8) stormwater samples (not quarterly  
2 averages) collected after the entry of this Consent Decree from DP-1 exceed the benchmark for a  
3 parameter as established in the NPDES permit, Defendant shall conduct a "Level Three  
4 Corrective Action" for DP-1 as that term is used in the NPDES permit. As part of the Level  
5 Three Corrective Action, Defendant shall retain a licensed professional engineer to revise the  
6 SWPPP for the facility to either: (1) include additional BMPs and additional stormwater  
7 treatment measures that are, in the professional judgment of the licensed professional engineer,  
8 sufficient to meet the NPDES permit's benchmarks at DP-1, or (2) eliminate stormwater  
9 discharges at DP-1 by re-routing the stormwater to another discharge point such that, in the  
10 professional judgment of the licensed professional engineer, the discharges will meet the NPDES  
11 permit's benchmarks. These revisions to the SWPPP shall be completed within ninety (90) days  
12 of Defendant's receipt of the stormwater sampling results triggering the requirements of this sub-  
13 paragraph 7.e, and Defendant shall provide Plaintiff a copy of the revised SWPPP at that same  
14 time. The revisions to the SWPPP shall include an implementation schedule that requires the  
15 additional BMPs and stormwater treatment measures be implemented, or the stormwater  
16 discharges at DP-1 be eliminated, as soon as possible, but in no instance later than September  
17 30th of the year after the requirements of this sub-paragraph 7.e are triggered. Defendant shall  
18 fully comply with the implementation schedule included in the revised SWPPP, and Defendant  
19 shall provide Plaintiff with written notification of Defendant's complete implementation of the  
20 additional BMPs and stormwater treatment measures described in the revised SWPPP or of the  
21 elimination of discharges at DP-1.  
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1 f. Defendant shall conduct a "Level Three Corrective Action," as that term is  
 2 used in the NPDES permit, for the discharge point labeled "Outfall D" on the facility map  
 3 attached hereto as Attachment A ("DP-D"). As part of the Level Three Corrective Action,  
 4 Defendant shall retain a licensed professional engineer to revise the SWPPP for the facility to  
 5 include additional BMPs, which may include additional stormwater treatment measures, that, in  
 6 the professional judgment of the licensed professional engineer, can be implemented at the  
 7 facility given existing constraints (including anticipated remediation) and will be the most  
 8 effective at reducing contaminate levels in discharges from DP-D. These revisions to the  
 9 SWPPP shall be completed within ninety (90) days of the entry of this Consent Decree by the  
 10 Court, and Defendant shall provide Plaintiff a copy of the revised SWPPP at that same time. The  
 11 revisions to the SWPPP shall include an implementation schedule that requires the additional  
 12 BMPs be implemented as soon as possible, but in no instance later than September 30, 2011.  
 13 Defendant shall fully comply with the implementation schedule included in the revised SWPPP,  
 14 and Defendant shall provide Plaintiff with written notification of Defendant's complete  
 15 implementation of the additional BMPs described in the revised SWPPP.

16 8. Within thirty (30) days of entry of this Consent Decree by the Court, Defendant  
 17 shall make a payment in the amount of \$15,000 (FIFTEEN THOUSAND DOLLARS) to the  
 18 Stewardship Partners for the Rain Garden Class and Installation in the Green/Duwamish  
 19 Watershed Project that is described in Attachment B to this Consent Decree. Such payment shall  
 20 be made by check payable and mailed to Stewardship Partners, 1411 4th Ave., Suite 1425,  
 21 Seattle, Washington 98101, and shall bear the notation "Puget Soundkeeper Alliance v. Alaska  
 22 Marine Lines, Inc., Clean Water Act Settlement," with a copy provided to Plaintiff;

1           9.       Within thirty (30) days of entry of this Consent Decree by the Court, Defendant  
2 shall pay Plaintiff's reasonable attorney fees and costs in the amount of \$14,300 (FOURTEEN  
3 THOUSAND AND THREE HUNDRED DOLLARS) by check payable and mailed to Smith &  
4 Lowney, PLLC, 2317 East John St., Seattle, WA 98112, attn: Brian A. Knutsen, in full and  
5 complete satisfaction of any claims Plaintiff may have under the Clean Water Act for fees and  
6 costs.  
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8           10.      The Court shall retain jurisdiction over this matter and allow this case to be  
9 reopened without filing fee for the purpose of enabling the parties to apply to the Court for any  
10 further order that may be necessary to construe, carry out, enforce compliance and/or resolve any  
11 dispute regarding the terms or conditions of this Consent Decree until termination of the Consent  
12 Decree per paragraph 12. In the event of a dispute regarding implementation of, or compliance  
13 with, this Consent Decree, the parties shall first attempt to informally resolve the dispute through  
14 meetings between the parties by serving written notice of request for resolution to the parties and  
15 their counsel of record. If no resolution is reached within thirty (30) days from the date that the  
16 notice of dispute is served, the parties may resolve the dispute by filing motions with the Court.  
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19           11.      The parties recognize that no consent judgment can be entered in a Clean Water  
20 Act suit in which the United States is not a party prior to forty-five (45) days following the  
21 receipt of a copy of the proposed consent judgment by the United States Attorney General and  
22 the Administrator of the United States Environmental Protection Agency pursuant to 33 U.S.C. §  
23 1365(c)(3). Therefore, upon the signing of this Consent Decree by the parties, Plaintiff shall  
24 serve copies of it upon the Administrator of the United States Environmental Protection Agency  
25 and the United States Attorney General.  
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1           12.     This Consent Decree shall take effect on the date it is entered by the Court. This  
2 Consent Decree shall terminate sixty (60) days following completion of all obligations under it.

3           13.     This Consent Decree may be modified only upon the written consent of the  
4 parties and the approval of the Court.

5           14.     If for any reason the Court should decline to approve this Consent Decree in the  
6 form presented, this Consent Decree and the settlement embodied herein shall be voidable at the  
7 sole discretion of either party. The parties agree to continue negotiations in good faith in an  
8 attempt to cure any objection raised by the Court to entry of this Consent Decree.  
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10           15.     Notifications or copies required by this Consent Decree to be made to Plaintiff  
11 shall be mailed to Puget Soundkeeper Alliance, 5305 Shilshole Ave. NW, Suite 150, Seattle,  
12 Washington 98107; or psa@pugetsoundkeeper.org. Notifications required by this Consent  
13 Decree to be made to Defendant shall be mailed to Alaska Marine Lines, Inc., P.O. Box 24348,  
14 Seattle, Washington 98124.  
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17           Dated this 17th day of December, 2010.  
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21 Marsha J. Pechman  
22 United States District Judge  
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1 PUGET SOUNDKEEPER ALLIANCE

2 Signature: s/ Chris Wilke

3 Title: Puget Soundkeeper / Executive Director

4 Dated: 10-21-10

5 ALASKA MARINE LINES, INC.

6 Signature: s/ Everett Billingslea

7 Title: Secretary

8 Dated: 10.19.10

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CONSENT DECREE - 10  
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